

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADJUSTMENT OF RATES OF KENTUCKY-) CASE NO. 2004-00103
AMERICAN WATER COMPANY)

ORDER

Bluegrass FLOW, Inc. (“FLOW”) has moved for full intervention in this matter. Kentucky-American Water Company (“Kentucky-American”), the Attorney General (“AG”), and the Lexington-Fayette County Urban Government (“LFUCG”) have submitted responses to the motion. Having considered the motion and the responses thereto, we grant the motion.

FLOW is a non-profit organization that is organized under KRS Chapter 273 and whose purpose is “to research, publish, and educate generally . . . as to the comparative benefits of local ownership of water utilities” Motion at 2. FLOW advances two arguments in support of its motion for intervention. First, it states that it represents the interest of Kentucky-American customers who reside outside of the LFUCG’s geographical borders. Id. Second, it asserts that it is likely to present issues or develop facts that will assist the Commission in fully considering Kentucky-American’s application for rate adjustment.

Administrative Regulation 807 KAR 5:001, Section 3(8), which governs intervention in Commission proceedings, provides:

If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by the party is likely to present issues or to develop facts that will assist the commission in fully considering the matter without undue

complicating or disrupting the proceedings, such person shall be granted full intervention.

FLOW's claim of a special interest in this proceeding that is not adequately represented is not well supported. The reasonableness of Kentucky-American's proposed rates, not local ownership of water utilities, is the principal issue in this proceeding. The question of local ownership is of limited relevance.¹

Moreover, the AG and LFUCG represent many, if not all, of the persons and interests that FLOW claims to represent. The AG has the statutory duty "to represent and appear on behalf of consumers' interests." KRS 367.150(8)(a).² This duty extends to the residents of areas outside of Fayette County, Kentucky. Likewise, the LFUCG has asserted that its appearance is on "its own behalf and behalf of the residents of Fayette County, Kentucky." LFUCG's Motion to Intervene at 1. As the LFUCG has initiated legal proceedings to acquire the facilities of Kentucky-American,³ the LFUCG appears to have a more direct and compelling interest in local control of water utilities than FLOW. To the extent that FLOW's members have supported and encouraged the LFUCG's efforts to acquire Kentucky-American, it appears that both entities' interests are very similar, if not identical.

¹ We recognize that some issues related to the question of local ownership may be relevant to this proceeding. For example, the rate-making treatment of test period expenses incurred by Kentucky-American to oppose LFUCG's efforts to acquire Kentucky-American's facilities is a relevant issue.

² The AG, however, states that he frequently does not represent all consumers or their interests when appearing before this Commission. "On numerous prior occasions, this Office has advised various consumers that the Attorney General does not have to present every argument, pursue every theory, or adopt every policy that is called to the attention of this Office." AG's Response to FLOW's Motion to Intervene at 4.

³ Lexington-Fayette Urban County Government v. Kentucky-American Water Co., Civil Action No. 03-CI-2804 (Fayette Cir. Ct. filed July 3, 2003).

This Commission agrees with the AG and the LFUCG that their appearance as parties in rate adjustment proceedings should not per se require the exclusion of others. We recognize that small groups of interested persons may have distinct and diverse interests that should be heard and whose exclusion would dilute or weaken the quality of our review of utility proposals. At the same time, the presence of multiple parties eschewing the same position and representing the same consumers is a recipe for lengthy, unfocused, and expensive administrative proceedings that do little to enhance regulatory oversight of utility rates and service.

While we are unable to find that FLOW has any special interest in this proceeding, we find that FLOW is likely to present issues and develop facts that may assist our consideration of Kentucky-American's proposed rate adjustment. Given the significance of the present case, we believe that FLOW should be allowed the opportunity to present evidence and argument on issues relevant to Kentucky-American's proposed rates and that its presence is likely to aid the deliberative process.⁴

The Commission advises FLOW and all other parties that the sole subject of this proceeding is the reasonableness of Kentucky-American's proposed rates. This proceeding is not a public forum for the discussion of the merits of local ownership of water utilities or of any other issue of general concern. We intend to take all necessary and appropriate actions to ensure that irrelevant matters do not distract the Commission, the public, or the parties from the important rate-making issues that are

⁴ Unlike Case No. 2003-00478 in which we denied FLOW's efforts to intervene, this case does not solely involve a technical rule of accounting, but involves a broader and more general review of Kentucky-American's recent financial operations and its plans for the near future. Moreover, this proceeding requires consideration of new proposals in the areas of economic development and low-income consumer assistance.

present in this proceeding. We expect all participants to focus their efforts on those issues.

IT IS THEREFORE ORDERED that:

1. FLOW's Motion to Intervene is granted.
2. FLOW shall be entitled to the full rights of a party and shall be served with the Commission's Orders after the date of this Order. FLOW shall not be entitled to present any evidence or examine any witness on extraneous matters unrelated or irrelevant to the reasonableness of Kentucky-American's proposed rates.
3. Each party shall serve on FLOW a paper copy of testimony, exhibits, pleadings, correspondence, and any other documents that it files with the Commission.
4. Should FLOW file documents in this proceeding with the Commission, FLOW shall serve a copy of such documents on all other parties of record.
5. FLOW shall comply with all provisions of the Commission's Order of May 27, 2004 related to the electronic filing of documents.

Done at Frankfort, Kentucky, this 1st day of September, 2004.

By the Commission

ATTEST:


Executive Director